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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA

Plaintiff,

THE WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

v.

THE WALKER RIVER IRRIGATION
DISTRICT, a corporation, et al.,

Defendants.

UNITED STATES OF AMERICA,
WALKER RIVER PAIUTE TRIBE,

Counterclaimants

v.

WALKER RIVER IRRIGATION
DISTRICT, et al.,

Counterdefendants.

IN EQUITY NO. C-125-B-ECR
3:73-cv-00127-ECR-LRL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO WITHDRAW AS
COUNSEL**

(James J. Peri Family Trust)

LAURA A. SCHROEDER and Schroeder Law Offices, P.C. ("Schroeder"), attorneys for
James J. Peri Family Trust (hereinafter the "Trust"), files this memorandum in support of their
Motion to Withdraw as Counsel.



POINTS AND AUTHORITIES

A. Schroeder has Complied with LR IA 10-6.

This motion is made under LR IA 10-6. In support thereof, Laura A. Schroeder relies upon the Affidavit of Laura A. Schroeder in Support of Motion to Withdraw as Counsel (“Schroeder Affidavit”) filed herewith. Notice of Schroeder’s intent to seek withdrawal was provided to both opposing counsel and the Trust as required by LR IA 10-6(b). Schroeder Affidavit ¶ 9.

B. 28 U.S.C. § 1654 does not require a substitute attorney as a condition of withdrawal.

In the context of a business entity, it is clear that pursuant to 28 U.S.C. § 1654, a company may only appear in federal court through a licensed attorney.¹ This general rule was the basis of this Court’s minute order dated September 16, 2008 denying a previous request to withdraw submitted on behalf of another party.² In its order the Court cited, *United States v. High Country Broadcasting Co., Inc.*, and *Licht v. America West Airlines*, two cases wherein the Ninth Circuit affirmed court orders disallowing non-attorneys from representing business entities.³ In *High Country*, the President (and sole shareholder) of High Country Broadcasting Corporation, Inc. was attempting to represent the company in court. When High Country failed to adhere to an order to retain counsel, the district court entered a default judgment against it. As

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¹ *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-203, 113 S.Ct. 716 (1993). (“[L]ower courts have uniformly held that 28 U.S.C. § 1654 providing that ‘parties may plead and conduct their own case personally or by counsel,’ does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney.”).

² 28 U.S.C. § 1654 states: “In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.”

³ See Minute Order dated September 16, 2008 (Docket #1426), citing *United States v. High Country Broadcasting Co., Inc.*, 3 F.3d 1244 (9th Cir. 1993); certiorari denied 115 S.Ct. 93, 513 U.S. 826, 130 L.Ed.2d 44; *Licht v. America West Airlines*, 40 F.3d 1058 (9th Cir. 1994).



1 for *Licht*, the Ninth Circuit upheld a bankruptcy court's order barring Sydney Licht, a non-
2 attorney, from representing a business association in which Licht was the senior partner.

3 While it is clear that business entities may appear only through a licensed attorney, there
4 is no support that 28 U.S.C. § 1654 likewise requires substitution of an attorney as a condition to
5 an attorney withdrawing from representation of a corporate defendant. As seen in *High Country*
6 and *Licht*, the statute places an onus upon the corporate *party* to appear only through a licensed
7 attorney or otherwise be barred from participating and risk default judgment. Neither of these
8 cases supports the proposition that 28 U.S.C. § 1654 burdens the unwilling attorney to
9 nevertheless continue representation until such time as the corporate defendant decides to
10 substitute counsel. Such an interpretation would result in a *de facto* appointment and subject vast
11 numbers of attorneys to potential unwarranted abuse by unscrupulous business owner *parties*.

12 **C. There is good cause to grant Schroeder's motion.**

13 Schroeder, in good faith, has advised the Trust of its need for alternate counsel should it
14 wish to appear in court and not sustain a default judgment. Schroeder Affidavit ¶ 8. The Trust
15 has not responded to correspondence. Schroeder Affidavit ¶ 6. Given that the Trust is
16 unresponsive, Schroeder does not desire to continue the relationship, and a compelled attorney-
17 client relationship is not warranted under the circumstances of this case. Schroeder has advised
18 the Trust to locate and retain alternate counsel. Schroeder Affidavit ¶¶ 5, 7. Schroeder has
19 provided the Trust with ample opportunity to substitute an attorney. Schroeder Affidavit ¶ 5.

20 In this case it is the party defendant, the Trust, who holds the burden of providing
21 substitute counsel, or otherwise risking default judgment or being barred from participating
22 further in the litigation. 28 U.S.C. § 1654 does not condition Schroeder's withdrawal as counsel
23 upon the provision of a substitute attorney. It is the party's responsibility, not Schroeder's, to
24 find substitute counsel. It is proper to grant Schroeder's motion to withdraw.

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1 WHEREFORE, Schroeder's Motion to Withdraw as Counsel should be granted.

2 DATED this 24th day of August, 2009.

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4 SCHROEDER LAW OFFICES, P.C.

5
6 /s/ Laura A. Schroeder

Laura A. Schroeder, NSB 3595

7 Wyatt E. Rolfe, NSB #10735

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